

IN THE UNITED STATES COURT FOR THE DISTRICT OF UTAH
NORTHERN DIVISION

ODI LUKE-SANCHEZ,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

MEMORANDUM DECISION AND
ORDER DENYING PETITIONER'S
MOTION TO VACATE

Civil Case No. 2:08-CV-442 TS
Criminal Case No. 2:05-CR-205 TS

This matter comes before the Court on Petitioner's Motion to Vacate. For the reasons discussed below, the Court will deny the Motion.

Petitioner filed his original Motion pursuant to 28 U.S.C. § 2255, on June 4, 2008.¹ On June 5, 2008, the Court ordered the government to respond to the Motion within 60 days.² The government filed its response on July 1, 2008, and served its response on Petitioner.³ Petitioner filed a number of related documents on August 28, 2008, seeking default judgment because of the government's alleged failure to respond to his Motion.⁴ On September 3, 2008, the Court

¹Civil Case No. 2:08-CV-442 TS, Docket No. 1.

²Civil Case No. 2:08-CV-442 TS, Docket No. 2.

³Civil Case No. 2:08-CV-442 TS, Docket No. 4.

⁴Civil Case No. 2:08-CV-442 TS, Docket Nos. 5-10.

denied Petitioner's Motion and denied his request for default judgment.⁵ Petitioner now brings the instant Motion.

Petitioner requests the Court, pursuant to Fed.R.Civ.P. 60(b), vacate the Court's decision denying Petitioner's Motion brought pursuant to § 2255. In particular, Petitioner complains that he did not receive a response to his Motion.

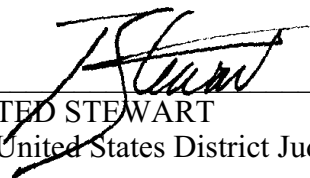
The Court finds Petitioner's arguments to be without merit. The Federal Rules of Civil Procedure are not necessarily binding in the context of this § 2255 Motion.⁶ Further, the government responded to Petitioner's § 2255 Motion and the Court disposed of the Motion on the merits after consider all the materials in the filed. The Court finds that Petitioner's requested relief is inappropriate.

It is therefore

ORDERED that Petitioner's Motion to Vacate (Docket No. 12) is DENIED.

DATED this 9th day of October, 2008.

BY THE COURT:



TED STEWART
United States District Judge

⁵Docket No. 11.

⁶ See Rules Governing Section 2255 Proceedings for the United States District Courts, Rule 12.